JUDICIAL DECISIONS ON CRIMINAL LAW AND PROCEDURE

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ACCOMPLICE.

Moynahan v. *People,* Colo. 167 Pac. 1175.

An "accomplice" includes in its meaning all persons who have been concerned in the commission of a crime; hence in a prosecution for knowingly buying stolen ores the thief, though his theft was disassociated from the offense of knowingly buying ores with which accused was charged, is an accomplice of accused. Garrigues, J., dissenting.

ASSAULT AND BATTERY.

State v. *Langford,* Dela. 102 Atl. 63. *Consent.*

A wife in confiding her person to her husband does not consent to cruel treatment or infectious diseases, and a husband, knowing that he had syphilis, an infectious disease, and concealing the fact from his wife, communicates the infection to her, is guilty of an assault and battery; the intent to communicate the disease being inferred from the actual result.

State v. *Cancelmo,* Ore. 168 Pac. 721. *Specific intent.*

In shooting his automatic pistol at a retreating automobile filled with people, one of whom was hit, defendant committed an assault with a dangerous weapon, though he did not have the specific intent to injure the particular person wounded.

CONSTITUTIONAL LAW.

State v. *Barela,* N. Mex. 168 Pac. 545. *Self-incrimination.*

Evidence of the correspondence of tracks of defendants, made by them under compulsion of the sheriff, with those found at the scene of the alleged crime of arson and leading therefrom, and evidence of the fitting of the shoes of defendants, taken from them by the sheriff, into tracks found at the scene of the crime, is not inadmissible, as violative of the constitutional guaranty against compulsory self-incrimination. The privilege protects a person from any disclosure sought by legal process against him as a witness. The fact that evidence is the result of an unlawful search of seizure, or is obtained by force or intimidation by private persons or officers, when not under sanction of judicial process, ordinarily has no effect whatever upon its admissibility.

INFANTS.

State v. *Vineyard,* W. Va. 93 S. E. 1034. *Capacity to commit crime.*

In an indictment for murder against an infant under fourteen years of age it is not necessary to negative the presumption of incapacity of the defendant to commit the crime charged against him.

But an instruction in such a case telling the jury that when the homicide is proved it is presumptively murder in the second degree, and if the state would elevate it to first degree murder the burden is upon it, and if the defendant would reduce the degree of the offense the burden is on him, constitutes reversible error. The law casts no such burden on an infant under the age of fourteen years, who is presumptively doli incapax.

And it is error for the court in such a case to tell the jury that if the defendant at the time of the homicide "had sufficient understanding as to know that the commission of that offense was wrong," the same law was applicable to him as to persons over the age of fourteen years. To convict an infant in such case it is necessary to show also that he knew or understood the nature and consequences of his act and showed design and malice in its execution.

LARCENY.

Ex parte Clark, Calif., D. C. A., 34 Dist., 167 Pac. 1143.

"The evidence taken before the magistrate discloses that the case involves the oft-told story of a bucolic and guileless individual, who, while awaiting for a train at the Sacramento railroad station to convey him to his home in a northern town, after a brief sojourn in the central portion of the state, accommodatingly handed over to a brace of oily-tongued strangers $120 of his available cash, as a loan, after the latter had insidiously crept into and gained his confidence and were suddenly awakened to a realization that the freightage on certain freight, which they represented that one of them had previously put on board of a freight train, had to be prepaid, and that they were without sufficient funds to pay the bill, exhibiting to the aforesaid guileless gentleman, as evidence of their 'good faith,' a document purporting to be a draft on an eastern bank for a sum greatly in excess of the amount necessary for their purpose." (Quoted from opinion of court.)

Held: Where confidence men procure money upon the pretext that it is a loan, with the intent to steal the same, the crime is larceny, the owner of the money not having parted with the title thereto.

PAROLE.

State v. *Ausplund,* Ore. 167 Pac. 1019. *Discretion of court.*

Under Laws 1911, p. 152, providing that, when any person who has not previously been convicted of a felony shall be convicted of a felony or misdemeanor and sentence not to exceed 10 years' imprisonment in the penitentiary shall have been pronounced, the court may, in its discretion, parole the defendant under certain conditions, the matter is left entirely to the discretion of the presiding judge, and there was no abuse or discretion in refusing to parole a defendant given an indeterminate sentence of from 1 to 15 years for manslaughter committed in producing an abortion, though the jury included a recommendation of leniency in their verdict, and though nine of them made affidavit that they would not have agreed to the verdict if they had known the court would not parole defendant.

SODOMY.

Ex parte De Ford, Okla. 168 Pac. 58. *Nature of offense.*

Sec. 2444, Rev. Laws 1910, providing: "Any person who is guilty of the detestable and abominable crime against nature, committed with mankind or with a beast, is punishable," etc., includes copulation between human beings per os as well as per annum.

Comer v. *State,* Ga. 94 S. E. 314. *Nature of the offense under Georgia statute.*

Pen. Code, sec. 373, reads as follows: "Sodomy is the carnal knowledge and connection against the order of nature, by man with man, or *in the same unnatural manner* with woman." In this section the words "the same unnatural manner" refer to the words "against the order of nature" and should be so

construed. Sexual intercourse by the use of the sexual organ of the female and the mouth and tongue of the male is as much "against the order of nature," and therefore as fully covered by the statute, as where the sexual intercourse is consummated by the use of the sexual organ of the male and the mouth of the female, or as where the unnatural connection is accomplished by the introduction of the sexual organ of one male into the mouth of another male. It is too narrow a construction to hold that the words "the same unnatural manner" limit the connection against the order of nature to cases where the connection is consummated in some manner by the use of the sexual organ of the male. Bloodworth, J., dissenting.

TRIAL.

State v. *Comisford,* Nev. 168 Pac. 287. *Argument of counsel.*

Remarks of prosecuting attorney in argument alluding to rumors being prevalent that the jury, because of personal association and friendships, would not have the courage to send accused to the penitentiary, were reversible error.

"The office of district attorney is one of great power and responsibility. It may often happen that he is called upon to protect the rights of an accused person from the possibility of a conviction based upon public sentiment rather than the actual facts of the case. When a prosecuting officer seeks to take advantage of public sentiment to gain an unjust conviction, or seeks to take an unfair advantage in the introduction of evidence, or in any other respect, he is failing in his duty as the state's representative."

People v. *Billings,* Calif. 168 Pac. 396. *Argument of counsel.*

In prosecution for murder by setting a bomb, it was not misconduct for the district attorney to compare defendant's conduct while testifying to that of a hyena, and describe it as the cowardliest and most disliked animal in the world.

Error assigned to the statement of the district attorney that "it was easy to see why accused objected to the state's showing the nature of a previous conviction," was waived by failure to assign it as misconduct in the trial court.

People v. *De Angelli,* Calif. 168 Pac. 699. *Misconduct of Prosecutor.*

In a trial for murder, the prosecutor's repeated statements that defendant was able to testify without an interpreter, made to induce the court to change its ruling that his testimony should be given through an interpreter, were not prejudicial, especially in view of the fact that if such statements were made without sufficient cause, and with an improper motive, it would operate more to defendant's benefit than to his prejudice.

THEATRES AND SHOWS.

City of Seattle v. *Smythe,* Wash., 166 Pac. 1150. *Showing indecent picture which has been approved by censorship board.*

Seattle ordinance, sec. 1, provides that it shall be unlawful for any person to display "any picture of an obscene and immoral nature or wherein any scene of violence is shown or presented in a gruesome manner or detail or in a revolting manner or which tends to corrupt morals," etc. Section 2 creates an advisory committee to aid in the prevention of violations of the ordinance. Section 3 makes it unlawful to exhibit any picture not approved by the national board of censorship or by the advisory committee, provided for by section 2. *Held,* that it constituted no defense to a prosecution under the ordinance that the picture displayed had been approved by the advisory committee appointed under the ordinance if in fact the picture was of a character prohibited by the ordinance.